

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of DOUGLAS M. BAHL and U.S. POSTAL SERVICE,  
POST OFFICE, Marshalltown, IA

*Docket No. 02-7; Submitted on the Record;  
Issued May 1, 2002*

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DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,  
A. PETER KANJORSKI

The issue is whether appellant's cervical condition was causally related to work factors.

On February 24, 2000 appellant, then a 41-year-old clerk, filed an occupational disease claim alleging that the herniated disc in his neck and pain in his right shoulder and arm were causally related to his work sorting flats and letters. He explained that in 1996 he injured his arms while trying to push a loaded mail cart through a set of doors which he thought were open. Appellant stated that pain in his neck and right shoulder and arm "began immediately" and continued over the next three years, "getting worse at times but never any better." Subsequently, the Office of Workers' Compensation Programs accepted appellant's claim for bilateral carpal tunnel syndrome, for which appellant underwent surgery in April and May 1999.

On November 23, 1999 Dr. Peter Wirtz, a Board-certified orthopedic surgeon, examined appellant for fitness for duty. He provided a history of injury and medical treatment, stating that following the 1996 work incident appellant developed right shoulder and arm pain, which bothered him "off and on" after he returned to limited duty. A magnetic resonance imaging (MRI) scan of the right shoulder in 1998 was normal, but appellant's symptoms continued and he underwent surgery for his carpal tunnel syndrome. Dr. Wirtz added that appellant had right neck pain which spread to the right shoulder blade area. He diagnosed degenerative disc disease, imposed a limitation on repetitive activities involving the shoulder and advised that the cervical disc degeneration seen on x-ray was not a work-related condition in itself.

In a report dated December 30, 1999, Dr. Margaret J. Fehrle, a Board-certified orthopedic surgeon who treated appellant's carpal tunnel syndrome, stated that appellant complained of continued right upper extremity pain from his neck down to his elbow. Dr. Fehrle disagreed with Dr. Wirtz's recommendations of work restrictions and suggested further testing.

In a report dated February 1, 2000, Dr. K. Douglas Green, a general surgeon, provided a history of injury, noting that appellant had been on light duty since January 1999. Dr. Green

stated that a January 14, 2000 MRI scan revealed degenerative changes in the cervical spine with a herniated disc at C6-7. Appellant complained of “intractable neck and upper right extremity pain which he relates to an injury in 1996.” He had an acute exacerbation of his pain within the prior month. Dr. Green recommended surgery, due to the failure of appellant’s symptoms to resolve completely over the past few years, the recent exacerbation of appellant’s pain and the size of the C6-7 disc osteophyte complex seen on the MRI scan.

By decision dated June 15, 2000, the Office denied appellant’s claim on the grounds that the medical evidence was insufficient to establish that his neck condition was causally related to work factors. Appellant requested reconsideration and submitted a September 10, 2000 report from Dr. Green, who concluded that appellant’s February 15, 2000 cervical fusion procedure was causally related to his work activities and the specific injury in 1996. Dr. Green added that the preexisting cervical degenerative disc disease underwent an acute exacerbation related to the work injury.

On November 22, 2000 the Office denied appellant’s request on the grounds that the evidence submitted was insufficient to warrant modification of its prior decision. Appellant again requested reconsideration and submitted a February 21, 2001 report from Dr. William C. Koenig, Jr., Board-certified in physical medicine and rehabilitation, who agreed with Dr. Wirtz that appellant’s cervical spondylosis (degenerative disc disease) was not caused by his work. However, the 1996 injury aggravated appellant’s disc degeneration “to the extent of initiating to a greater degree the osteophyte formation and most specifically the focal disc herniation which later required Dr. Green’s surgical intervention.”

By decision dated June 18, 2001, the Office denied modification of its prior decisions on the grounds that the medical evidence was insufficient to establish a causal relationship between appellant’s neck condition and employment factors.

The Board finds that appellant has met his burden of proof to establish that his neck condition was causally related to work factors.

An employee seeking benefits under the Federal Employees’ Compensation Act<sup>1</sup> has the burden of establishing the essential elements of his or her claim,<sup>2</sup> including the fact that the individual is an “employee of the United States” within the meaning of the Act,<sup>3</sup> that the claim was timely filed within the applicable limitation period of the Act,<sup>4</sup> that an injury was sustained in the performance of duty as alleged, and that any disability or condition for which

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Irene St. John*, 50 ECAB 521, 522 (1999).

<sup>3</sup> *Barbara L. Riggs*, 50 ECAB 133, 137 (1998).

<sup>4</sup> *Albert K. Tsutsui*, 44 ECAB 1004, 1007 (1993).

compensation is claimed is causally related to the employment injury.<sup>5</sup> These elements must be established regardless of whether the claim is for a traumatic injury or an occupational disease.<sup>6</sup>

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the condition or disease; and (3) medical evidence establishing that the employment factors were the proximate cause of the disease or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.<sup>7</sup>

Causal relationship is a medical issue,<sup>8</sup> and the medical evidence required to establish a causal relationship, generally, is rationalized medical evidence. This consists of a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors.<sup>9</sup> The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>10</sup>

Dr. Koenig's comprehensive opinion is sufficient to establish that appellant's cervical condition was causally related to the initial 1996 accepted injury and subsequent work activities. First, he provided a detailed history of appellant's medical treatment and reviewed his medical record. Dr. Koenig stated that when appellant pushed a mail cart into locked swing doors, he had immediate neck pain radiating into his right upper extremity. At that time, a neurologist conducted electrodiagnostic testing in September 1996, which revealed mild right carpal tunnel syndrome and possible cervical radiculopathy.<sup>11</sup> Dr. Koenig summarized appellant's treatment for carpal tunnel syndrome and noted that appellant resumed work in the fall of 1999 with restrictions of lifting and repetitive activity.

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<sup>5</sup> *David M. Ibarra*, 48 ECAB 218 (1996); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>6</sup> *Ruth Seuell*, 48 ECAB 188, 192 (1996).

<sup>7</sup> *Dennis M. Mascarenas*, 49 ECAB 215, 219 (1997); 20 C.F.R. § 10.5(q) (defining an occupational disease or illness as "a condition produced by the work environment over a period longer than a single workday or workshift").

<sup>8</sup> *Elizabeth Stanislav*, 49 ECAB 540, 541 (1998).

<sup>9</sup> *Duane B. Harris*, 49 ECAB 170, 173 (1997).

<sup>10</sup> *Gary L. Fowler*, 45 ECAB 365, (1994).

<sup>11</sup> Dr. Fehrle stated on December 22, 1999 that she had previously seen appellant in 1996 after an injury to his right upper extremity. At that time, an electromyography (EMG) showed some evidence of cervical radiculopathy. Appellant returned to work but continued to complain of pain until she saw him again in February 1999.

Noting appellant's neck and right upper extremity complaints and a severe exacerbation in January 2000, Dr. Koenig referred to Dr. Green's February 1, 2000 report which stated that following the 1999 surgeries for carpal tunnel syndrome, appellant had significant improvement on the left side but only modest improvement on the right and continued to complain of neck pain with radiation in the C7 area and right upper extremity. Dr. Koenig concluded that appellant had never been completely free of some degree of neck pain since the 1996 incident, despite being active in the workplace.

While Dr. Koenig agreed with Dr. Wirtz that appellant's cervical disc disease was not caused by his work, he opined that the 1996 incident aggravated his preexisting cervical disc degeneration by increasing the osteophyte formation to the extent that surgical fusion was required. He stated that appellant's history as related to him and interpreted by others led to the conclusion that appellant had been symptomatic intermittently for irritation of the right C7 nerve root from its cervical source since 1996. Dr. Koenig explained:

“[Appellant's] job situation, involving lifting and moving and sometimes throwing packages, caused an increased pressure on the cervical disc areas through a Valsalva-like maneuver that occurs and along with such maneuvers also as pushing and pulling carts which he has done in his job and associated with head movement, etc., all has provided for a scenario of intermittent irritation of the C7 nerve root, at least on the right side certainly. Thus, it is possible for a 'hard' mild cervical disc to become manifest over a course of time with cumulative injury and that is operative in [appellant's] clinical course.... I believe [that appellant] in actuality has been intermittently symptomatic of his cervical disease from 1996 up through and to including the present.... For the pathologic reasons described, and also considering the lack of improvement despite Dr. Green's excellent surgical efforts, I must consider [appellant's] clinical condition a permanent aggravation of his preexisting condition.”

Given Dr. Koenig's reasoned explanation of how appellant's cervical condition was causally related to the 1996 work injury and subsequent work activities, and the fact that the record is devoid of evidence contradicting such a conclusion, the Board finds that appellant has established that his cervical condition is causally related to his employment.<sup>12</sup> The case will be remanded to the Office to determine the nature and extent of disability for which compensation is claimed. After such development of the case record as the Office deems necessary, a *de novo* decision shall be issued.

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<sup>12</sup> See *Ruth Seuell*, *supra* note 6 (finding that a medical report relating objective factors of disability and explaining how appellant's condition was related to work factors was sufficient to establish a causal relationship).

The June 18, 2001 and November 22, 2000 decisions of the Office of Workers' Compensation Programs are reversed and the case is remanded for further development consistent with this decision.

Dated, Washington, DC  
May 1, 2002

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

A. Peter Kanjorski  
Alternate Member